



March 10, 1999

Mr. Roland Castaneda
General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR99-0687

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122750.

The Dallas Area Rapid Transit ("DART") received a request for six categories of documents, beginning with "1010# Petekin [sic] file of human resource along with all grievances filed by him against supervisors or management staff [sic]" and ending with, "Gloria Smith appt. [sic] listed for Barbara Carr 1998." You state that you have provided the requestor with 106 pages of documents that are responsive to the request.¹ You have submitted to this office the responsive information, including both the documents provided to the requestor and the documents withheld from the requestor. You claim that the requested information, which you have withheld, is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that some information is excepted from disclosure under sections 552.101 and 552.102. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes, by common-law privacy, and by constitutional privacy. It excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld on the basis of common-law privacy

¹We do not address the documents that DART has released.

when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), and information concerning the intimate relations between individuals and their family members. *See* Open Records Decision No. 470 (1987).

After examining the documents you seek to withhold, we find that some of them must be withheld as personal financial information and others must be released. Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Thus, a public employee's allocation of his salary to a voluntary investment program offered by his employer is a personal investment decision, and information about it is excepted from disclosure by a common-law right of privacy. Open Records Decision Nos. 600 (1992) (TexFlex benefits), 545 (1992) (deferred compensation plan). However, where a transaction is funded in part by the state, it involves the employee in a transaction with the state and is not protected by privacy. Open Records Decision No. 600 (1992). Some of the information at issue appears to involve a financial transaction between an individual and the governmental body, *e.g.*, the employees' involvement with DART's Capital Accumulation Plan & Trust. *See* Open Records Decision No. 600 at 9-10 (1992), 480 (1987). We do not believe that this information is protected by a right of privacy. DART, therefore, may not withhold this information under section 552.101. We have marked the information that you must release. The remaining information in Attachment C must be released.

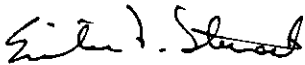
Section 552.101 also excepts from disclosure information protected by other statutes. Form W-4, the Employee's Withholding Allowance Certificate, is confidential as tax return information under title 26, section 6103(a) of the United States Code and must not be released. Open Records Decision No. 600 at 8-9 (1992).

Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that

employee or official has family members. Section 552.117 requires you to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987).²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Emilie F. Stewart
Open Records Division

EFS\nc

Ref: ID# 122750

Enclosures: Marked documents

cc: Ms. Barbara Carr
321 Trees
Cedar Hill, Texas 75104
(w/o enclosures)

²Federal law may also prohibit disclosure of this employee's social security number. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).